

## Department of the Navy, DoD

## § 750.26

respondeat superior (master and servant) of the place where the act or omission occurred. Although 28 U.S.C. 2671 states that acting within the scope of employment means acting in the line of duty, the converse is not always true. For administrative purposes, a Government employee may be found “in the line of duty,” yet not meet the criteria for a finding of “within the scope of employment” under the law of the place where the act or omission occurred.

### § 750.24 Statutory/regulatory authority.

The statutory provisions of the Federal Tort Claims Act (FTCA) are at 28 U.S.C. 1346(b), 2671–2672, and 2674–2680. The Attorney General of the United States has issued regulations on administrative claims filed under the FTCA at 28 CFR part 14. If the provisions of this section and the Attorney General’s regulations conflict, the Attorney General’s regulations prevail.

### § 750.25 Scope of liability.

(a) *Territorial limitations.* The FTCA does not apply to any claim arising in a foreign country. 28 U.S.C. 2680(k) and *Beattie v. United States*, 756 F.2d 91 (D.C. Cir. 1984).

(b) *Exclusions from liability.* Statutes and case law have established categories of exclusions from FTCA liability.

(1) *Statutory exclusions.* Section 2680 of Title 28 lists claims not cognizable under the FTCA. They include:

(i) Claims based on the exercise or performance of, or the failure to exercise or perform, a discretionary Government function;

(ii) Admiralty claims under 46 U.S.C. 741–752 or 781–790. Claims under the Death on the High Seas Act (46 U.S.C. 761), however, are cognizable under the FTCA. All admiralty claims will be referred to the Judge Advocate General for adjudication. Admiralty claims against the Navy shall be processed under part 752 of this Chapter;

(iii) Claims arising from intentional torts, except those referred to in § 750.23(b);

(iv) Claims arising from the combat activities of the military or naval

forces, or the Coast Guard, during time of war.

(2) *Additional claims not payable.* Although not expressly statutorily excepted, the following types of claims shall not be paid under the FTCA:

(i) A claim for personal injury or death of a member of the armed forces of the United States incurred incident to military service or duty. Compare *United States v. Johnson*, 481 U.S. 681 (1987); *Feres v. United States*, 340 U.S. 135 (1950) with *Brooks v. United States*, 337 U.S. 49 (1949);

(ii) Any claim by military personnel or civilian employees of the Navy, paid from appropriated funds, for personal property damage occurring incident to service or Federal employment, cognizable under 31 U.S.C. 3721 and the applicable Personnel Claims Regulations, 32 CFR part 751;

(iii) Any claim by employees of non-appropriated-fund activities for personal property damage occurring incident to Federal employment. These claims will be processed as indicated in 32 CFR part 756;

(iv) Any claim for personal injury or death covered by the Federal Employees’ Compensation Act (5 U.S.C. 8116c);

(v) Any claim for personal injury or death covered by the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 905 and 5 U.S.C. 8171);

(vi) That portion of any claim for personal injury or property damage, caused by the negligence or fault of a Government contractor, to the extent such contractor may have assumed liability under the terms of the contract (see *United States v. Seckinger*, 397 U.S. 203 (1969) and § 750.23(c)(2);

(vii) Any claim against the Department of the Navy by another Federal agency. Property belonging to the Government is not owned by any one department of the Government. The Government does not reimburse itself for the loss of its own property except where specifically provided for by law; and

(viii) Any claim for damage to a vehicle rented pursuant to travel orders.

### § 750.26 The administrative claim.

(a) *Proper claimant.* See § 750.5 of this part.